

New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days' notice to the public for comment on information collection activities before seeking approval of such activities by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(I)-(iv); 5 CFR 1320.8(d)(1)(I)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of the proposed information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Track Transportation Time Study.

OMB Control Number: 2130—New.

Abstract: The Rail Safety Improvement Act of 2008 (Pub. L. 110-432) calls for a track inspection time study to be performed by FRA. The information required to develop the

report will be at least partially obtained through a series of information gathering surveys which are focused on various aspects of track inspection. Each survey will be customized for a particular segment of the workforce and will include track inspectors, track supervisors or roadmasters, middle management (division engineers), and senior management (chief engineers).

The purpose of the proposed study is to address four issues raised in the Rail Safety Improvement Act: (1) Determine whether the required intervals of track inspections for each class of track should be amended; (2) Determine whether track remedial action requirements should be amended; (3) Determine whether different track inspection and repair priorities or methods should be required; and (4) Determine whether the speed at which railroad track inspection vehicles operate and the scope of the territory they generally cover allow for proper inspection of the track and whether such speed and appropriate scope should be regulated by the Secretary.

Form Number(s): N/A.

Affected Public: Railroad Employees.

Respondent Universe: 500

Individuals.

Frequency of Submission: On occasion.

Reporting Burden:

RFEI notice	Respondent universe	Total annual responses	Average time per response (hour(s))	Total annual burden hours
—Track Inspectors—Focus Groups	20 Individuals	16	20	320
—Track Inspectors—Standard Survey	450 Individuals	350	1	350
—Track Supervisors (Roadmasters)	35 Individuals	25	1	25
—RR Middle Management (Div. Engineers)	10 Individuals	8	1	8
—RR Senior Management (Senior Engineers)	10 Individuals	8	1	8

Total Responses: 407.

Estimated Total Annual Burden: 711 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501-3520.

Issued in Washington, DC on April 20, 2009.

Kimberly Orben,

Director, Office of Financial Management, Federal Railroad Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2009-0020]

Notice of Buy America Waiver Request From the Capital Metropolitan Transportation Authority of Austin, TX

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Buy America waiver request and request for comments.

SUMMARY: The Capital Metropolitan Transportation Authority (Capital Metro) of Austin, Texas, has asked the Federal Transit Administration (FTA) to waive its Buy America requirements to permit it to purchase rail car vehicles that will be manufactured by Stadler Bussnang AG (Stadler) in Switzerland.

According to Capital Metro, the rail cars are not available from a domestic source. This Notice sets forth Capital Metro's arguments for a non-availability waiver and seeks comment thereon.

DATES: Comments must be received by May 1, 2009. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA-2009-0020. All electronic submissions must be made to the U.S. Government electronic site at www.regulations.gov. Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web site:* www.regulations.gov. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493-2251;

(3) *Mail*: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, Room W12-140, Washington, DC 20590-0001.

(4) *Hand Delivery*: Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the "Federal Transit Administration" and include docket number FTA-2009-0020. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 Fed. Reg. 19477), or visit www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Jayme L. Blakesley at (202) 366-0304 or jayme.blakesley@dot.gov.

SUPPLEMENTARY INFORMATION:

The purpose of this notice is to seek public comment on whether the Federal Transit Administration should waive its Buy America requirements for six (6) rail car vehicles to be manufactured and assembled in Switzerland by Stadler Bussnang AG (Stadler) for the Capital Metropolitan Transportation Authority (Capital Metro) of Austin, Texas. Because Capital Metro has already awarded a contract to Stadler, it has asked for a post-award waiver.

Capital Metro set forth the grounds for its request in a letter dated February 19, 2009, a copy of which will be placed in the Docket: (1) Capital Metro acted in good faith when in 2006 it planned to use local sales tax revenues to fund its contract with Stadler; (2) Actual sales tax receipts are less than the amount estimated in 2006; and (3) Both offers submitted to Capital Metro proposed to manufacture and assemble the rail cars outside of the United States.

Capital Metro structured the RFP as a locally funded procurement without including many of the standard Federal requirements like Buy America and Cargo Preference. Because of a drop in sales tax revenues, Capital Metro's local revenue source, the feasibility of

funding this procurement with local funds has been significantly diminished. For this reason, Capital Metro has decided to utilize Federal funds and to seek a Buy America waiver for this vehicle procurement. FTA notes that Capital Metro did not request, and did not receive, the Buy America certification forms that are required in federally funded procurements.

With certain exceptions, FTA's "Buy America" requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). One such exception is if "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality." 49 U.S.C. 5323(j)(2)(B).

Section 3023(i)(5)(C) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59) gave FTA the statutory authority to issue post-award waivers. This authority limits post-award waivers to non-availability waivers only. Consequently, the only post-award waivers granted to date have been on the basis of non-availability in cases in which the contractor has made a certification of compliance with the requirements in good faith but, for reasons not foreseen at the time of the initial RFP, compliance was rendered impossible or impracticable.

"In determining whether the conditions exist to grant a post-award non-availability waiver, [FTA] will consider all appropriate factors on a case-by-case basis." 49 CFR 661.7(c)(3). Such factors will include "the status of other bidders or offerors who are Buy America compliant and can furnish domestic material or products on an FTA-funded project," 72 Fed. Reg. 53,691 (Sept. 20, 2007), and "may include project schedule and budget." 71 Fed. Reg. 69,415 (Nov. 30, 2006). In addition, FTA will look to "existing precedents in public contracting law and practice." 71 Fed. Reg. 69,416 (Nov. 30, 2006). One such precedent is FTA's recent decision to grant a post-award non-availability waiver to the Regional Transportation Commission of Southern Nevada in circumstances similar to Capital Metro's request.

FTA notes that, unlike with public interest waivers, it is not required to publish a notice in the **Federal Register** before waiving its Buy America requirements on the basis of non-availability. In this instance, however, FTA is proceeding with an abundance

of caution, given the unique circumstances by which a prospective FTA grantee issued a request for proposals without the inclusion of the traditional Buy America clause, intending to fully underwrite the contract using exclusively local funding. Therefore, in order to understand completely the facts surrounding Capital Metro's request, FTA seeks comment from all interested parties. A full copy of Capital Metro's petition has been placed in docket number FTA-2009-0020. Please submit comments by May 1, 2009. Late-filed comments will be considered to the extent practicable.

Issued this 20th day of April 2009.

Scott A. Biehl,

Acting Chief Counsel.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35238]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Pursuant to a written trackage rights agreement dated January 20, 2009, Union Pacific Railroad Company (UP) has agreed to grant temporary local trackage rights to BNSF Railway Company (BNSF) over UP lines extending between: (1) UP milepost 93.2 at Stockton, CA, on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, CA, on UP's Canyon Subdivision, a distance of approximately 126.2 miles; and (2) UP milepost 219.4 at Elsey, CA, and UP milepost 280.7 at Keddie, CA, on UP's Canyon Subdivision, a distance of 61.3 miles.¹

The transaction is scheduled to be consummated on or after May 9, 2009, the effective date of the exemption (30 days after the exemption is filed).

The trackage rights agreement will permit BNSF to move empty and loaded

¹ BNSF submits that the trackage rights being granted here are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See *Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003). Therefore, BNSF concurrently has filed a petition for partial revocation of this exemption in STB Finance Docket No. 35238 (Sub-No. 1), *BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company*, wherein BNSF requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire at midnight on December 31, 2009, as provided in the parties' agreement. The petition will be addressed by the Board in a separate decision.